Supreme Court, U.S.
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No. 85-532

IN THE

Supreme Court of the United States

October Term, 1985

SPORTS AND HEALTH CLUB, INC., d/b/a
LaSalle Sports & Health Club,
Normandale Sports & Health Club,
St. Louis Park Sports & Health Club,
Apache Plaza Sports & Health Club,
Midway Sports & Health Club,
Northland Park Sports & Health Club,
Tonka Sports & Health Club,
Arthur Owens, Marc Crevier, and Forest Larson,
Appellants,

v.

STATE OF MINNESOTA, by MARILYN E. McCLURE,
and her successor, IRENE GOMEZ-BETHKE,
Commissioner, Department of Human Rights,
Appellee.

ON APPEAL FROM THE
SUPREME COURT OF MINNESOTA

MOTION TO DISMISS

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SPORTS AND HEALTH CLUB, INC., et al.,
Appellants,

v.

STATE OF MINNESOTA, by MARILYN E. McCLURE, and her successor, IRENE GOMEZ-BETHKE, Commissioner, Department of Human Rights,
Appellee.

ON APPEAL FROM THE
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MOTION TO DISMISS

Appellee moved the Court pursuant to Rule 16(b) to dismiss the appeal herein on the ground that appellants raise no substantial federal questions.

THE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This litigation involves the Minnesota Human Rights Act (the "Act" or "Human Rights Act"), Minn. Stat. §§ 363.01-.14 (1984). The Act provides, *inter alia*, that it is unlawful for an employer to discriminate against employees or prospective employees on the basis of sex, marital status, or religion. Minn. Stat. § 363.03, subd. 1 (1984).[1] It is also a violation of the Act to condition the provision of public accommodations upon religion.[2] Minn. Stat. § 363.03, subd. 3 (1984). The state interest furthered by the Act is securing freedom for its citizens from discrimination in employment and in the provision of public accommodations. Minn. Stat. § 363.12 (1984). The Human Rights Act is reproduced in its entirety in the Appendix to the Appellants' Jurisdictional Statement, A-247-98.

Appellants challenged the Act as being violative of the first amendment of the United States Constitution. That amendment provides that "Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise

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[1] The statutory provisions involved are reproduced in appellants' appendix to the Jurisdictional Statement.

[2] The State did not challenge many of appellants' practices, including the placing within the clubs large placards denouncing religious beliefs and practices different from appellants' and displaying Christian literature throughout the clubs. *See Jurisdictional Statement* at 6, A-146-47, No. 85-538 (1985). However, the Administrative Law Judge (hereinafter "ALJ") found a violation of Minn. Stat. § 363.12 (1984) in appellants' treatment of one member who "was intim-[idated], humiliated and ridiculed because of her religious views . . . ." *Id.* at A-144. The ALJ did not certify a class of members and the State did not appeal that determination. Appellants' practices most directly affect employees. Therefore, this brief will focus primarily upon those aspects of this case.

thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, or to petition the government for a redress of grievances."

STATEMENT OF THE CASE

This case involves a conflict between Minnesota's efforts to shield its citizens from religious discrimination and a corporation's assertion that it can treat its customers, employees, and prospective employees in accordance with the convictions of its officers that are based upon their interpretation of the Bible. The corporation, Sports and Health Club, Inc., (hereinafter "Sports and Health") is owned and operated by Arthur Owens, Marc Crevier, and Forest Larson (hereinafter "appellants"). There are seven Sports and Health facilities in the Minneapolis-St. Paul area employing approximately 140 people and serving approximately 18,000 members. *State, by McClure v. Sports and Health Club, Inc.*, 370 N.W.2d 844, 846 (Minn. 1985). Each club offers memberships to the general public. Members may use any of the seven facilities' exercise equipment and participate in physical exercise classes. Members may receive counselling regarding diet and exercise. At each club there is a manager, assistant manager, and several associate membership directors. The duties of associate membership directors include selling memberships, structuring exercise and diet programs for members, and leading exercise classes. *Id.*

Appellants claim that every aspect of their lives, including decisions regarding the operation of Sports and Health, is regulated by the teachings of Jesus Christ contained in the Scriptures. *Jurisdictional Statement* at 5-6, No. 85-535 (1985). Thus, they require managers and assistant managers to attend weekly Bible-study classes during business hours; they

refuse to hire a single person living with a member of the opposite sex; and they fire good, hardworking employees merely because they refuse to participate in appellants' religious practices. *State, by McClure v. Sports and Health Club, Inc.*, 370 N.W.2d at 846-47. Appellants claim that because these judgments and actions are based upon how they believe Jesus Christ, speaking through the Scriptures, has instructed them to act, they are insulated from regulation by the Act insofar as it mandates contradictory behavior.[3] They assert that the religious neutrality required of a business towards its customers and employees by the Act is an unconstitutional burden upon appellants' ability to freely exercise their religion.

Appellants' discriminatory practices were found in violation of the Human Rights Act and enjoined by a state ALJ on April 26, 1984. The Minnesota Supreme Court affirmed the orders of the ALJ in a decision issued May 17, 1985.[4] *State, by McClure v. Sports and Health Club, Inc.*, 370 N.W.2d 844 (1985). On June 28, 1985, that court denied appellants' motion for a rehearing. A notice of appeal to this Court was filed on July 26. Justice Blackmun rejected appellants' motion for a stay on September 10, 1985. Appellants filed their Jurisdictional Statement on September 25, 1985.

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[3] The State's action seeks to enjoin appellants from engaging in discriminatory conduct and to compensate persons injured by that conduct. The State's interest is in prohibiting conduct that violates the Act. The State did not initiate this action against appellants because of their religious views. Appellants raise their religious beliefs as justification for their conduct. The religious nature of their actions does not by itself trigger application of the Act.

[4] The court also remanded the case for certification of a class earlier rejected for certification by the ALJ. 370 N.W.2d at 844.

ARGUMENT

APPELLANTS PRESENT NO SUBSTANTIAL QUESTION NOT PREVIOUSLY DECIDED BY THIS COURT.

Appellants contend that because the religious beliefs that dictate their employment practices are sincerely held, they are entitled to constitutional protection under the first amendment.[5] Because prior decisions of this Court so firmly establish the correctness of the Minnesota Supreme Court's decision rejecting appellants' contention, this appeal raises no substantial federal question.

This Court has declared that while the freedom to believe is protected as an absolute right, the functioning of an orderly society requires that an individual's right to practice his religion be subjected to reasonable regulation by the state. *See Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940). Using a three-part test developed by this Court, the Minnesota

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[5] As they did in the state courts, appellants continue to claim the ALJ's orders violate the free speech, free exercise, and free association clauses of the first amendment. However, appellants have never, and do not now, raise any legal argument supporting their association and speech claims. Therefore, this motion will address only those arguments considered by the court below and raised for consideration before this Court.

Appellants also claim a violation of the establishment clause of the first amendment. They claim that enforcement of the Human Rights Act results in the establishment of a state religion of "secularist beliefs." *Jurisdictional Statement* at 25, No. 85-532 (1985). As this Court stated in *Bob Jones University v. United States*, 461 U.S. at 604-05, n.30 (1983), "a regulation does not violate the Establishment Clause merely because it 'happens to coincide or harmonize with the tenets of some or all religions.'" (Citation omitted.) So long as the regulation has a neutral, secular basis, does not cause excessive entanglement with religion, and does not advance or inhibit the exercise of religion, there is no violation of the establishment clause. *Id.*

Supreme Court held that the regulation at issue in this case is reasonable and does not, as appellants contend, impose an unconstitutional burden upon appellants' free exercise of religion. *State, by McClure v. Sports and Health Club, Inc.*, 370 N.W.2d at 851-52. That test requires, first, a determination of whether the statute imposes a burden upon appellants' constitutional rights; second, whether that burden is justified by a compelling governmental interest; and, third, whether the regulation is the least restrictive means to achieve the state's goals. *Bob Jones University v. United States*, 461 U.S. 574, 603-04 (1983); *United States v. Lee*, 455 U.S. 252, 257 (1982); *Thomas v. Review Bd. of Indiana Employment Sec.*, 450 U.S. 707, 718 (1981).

In applying this Court's standards to the present case, the Minnesota Supreme Court determined that although the state's actions abridged appellants' sincerely held beliefs, the government's interest in prohibiting discrimination is overriding and compelling. 370 N.W.2d at 852. The Minnesota court further held that the state's goals would be frustrated substantially by use of any lesser restrictive means. *Id.* at 853.

Appellants seek review by this Court of a state court decision prohibiting appellants from continuing the practices enjoined by the ALJ. Those practices include asking job applicants whether they are Christian, are willing to speak freely about religion to other people, are planning to have children, read the Bible, pray, or attend church. Single female applicants are asked if they have their father's consent to work; married female applicants are asked if they have their husband's consent.[6] 370 N.W.2d at 846-47. Single applicants who live with a member of the opposite sex are not considered for

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[6] Without such consent, these women would be denied employment. *Id.* at 847.

employment. All employees are requested repeatedly to attend weekly Bible study sessions. No one who fails to espouse a born-again Christianity consistent with appellants' beliefs and practices will be promoted into management despite relevant qualifications. 370 N.W.2d at 847. It is these practices that appellants claim are constitutionally protected. It is these practices that the ALJ and the Minnesota Supreme Court declared must be enjoined. Based upon the prior decisions of this Court, the Minnesota court did not err in its decision.

The fact that appellants' practice of their religion is burdened by application of the Act does not mean that they must be exempted. This Court has declared that a burden upon religious liberty may be justified "by showing that it is the least restrictive means of achieving some compelling state interest." *Thomas v. Review Bd. of Indiana Employment Sec.*, 450 U.S. 707, 718 (1981). The compelling nature of Minnesota's interest in eliminating discrimination against its citizens is a goal "of the highest order." *Roberts v. United States Jaycees*, 104 S.Ct. 3244, 3253 (1984). When presented with such an overriding state interest, this Court has permitted regulation of religiously based conduct. In *Bob Jones University v. United States*, 461 U.S. 574 (1983), this Court upheld the denial of tax exempt status to an educational institution practicing racial discrimination despite a finding that the institution's practices resulted from sincerely held religious beliefs. *Id.* at 603-04. Similarly, the government's interest in procuring manpower for military purposes outweighs a conscientious objector's religiously motivated opposition to a particular war. *Gillette v. United States*, 401 U.S. 437, 462 (1971). The state interest in this case of eliminating religious discrimination in employment and public accommodations is equally compelling.

Not only is the state's goal overriding and compelling, but there are no less restrictive means available to serve that interest. Because the state's goal is the elimination of discrimination in employment, there is no way that interest can be furthered effectively without enjoining appellants from continuing their discriminatory practices. Money damages cannot compensate adequately. The state is not only interested in compensating individuals who have been and will be injured by appellant's conduct; the state is interested also in forbidding that conduct, precluding its recurrence. The eradication of discrimination in employment and in the provision of public accommodations cannot be achieved by any lesser means.

Appellants' Jurisdictional Statement fails to demonstrate any flaw in the reasoning of the Minnesota Supreme Court or any error or omission by that court in applying the decisions of this Court. Indeed, even the dissenting opinions were unable to articulate a manner in which a decision favorable to appellants could be reconciled with the law as established by this Court. *State, by McClure v. Sports and Health Club, Inc.*, 370 N.W.2d at 854-77 (Peterson, J. and Yetka, J., dissenting).

To permit appellants to continue to operate their secular business in violation of state law would permit them to continue to force their religious views upon their employees. " 'The First Amendment . . . gives no one the right to insist that in pursuit of their own interests others must conform their conduct to his own religious necessities.' " *Thornton v. Caldor, Inc.*, 105 S.Ct. 2914, 2918 (1985) (*quoting with approval, Otter v. Baltimore & Ohio R.R. Co.*, 205 F.2d 58, 61 (2d Cir. 1953) (Learned Hand, J.)). Appellants' conduct clearly is beyond the bounds of protection afforded by the first amendment as articulated by this Court.

CONCLUSION

Appellee respectfully submits that the decision of the Minnesota Supreme Court closely follows all relevant decisions of this Court and, thus, appellants' cause raises no substantial federal question. Appellee, therefore, respectfully moves this Court to dismiss this appeal.

Dated: October 25, 1985.

Respectfully submitted,

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